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Nos. 75-911 and 75-912

In the Supreme Court of the United States

OCTOBER TERM, 1975

FRANK DOUGLAS WARD, PETITIONER

v.

UNITED STATES OF AMERICA

JOHNNIE SLINGERLAND, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioners contend that the evidence was insufficient to sustain their convictions.

After a jury trial in the United States District Court for the Eastern District of Arkansas, petitioners, together with Paul Ray Jarnigan and Joseph Micciche, Sr., were convicted on one count of conspiring knowingly and fraudulently to transfer and conceal assets in contemplation of a bankruptcy proceeding, in violation of 18 U.S.C. 152 and

371.[1] Petitioner Ward was sentenced to four years' imprisonment and petitioner Slingerland to five years' imprisonment. The court of appeals affirmed (Pet. App.).

1. Government witness William Wilson, who pleaded guilty, testified that in October 1973 he and petitioners expressly agreed to defraud creditors by establishing good credit, ordering a large inventory, disposing of that inventory for whatever it would bring, and then disappearing (Tr. 262-266).[2] In December 1973, pursuant to the scheme, Factory Surplus and Freight Sales (FSFS), a furniture store, was established (Tr. 266-268). In April 1974, after experiencing an increasing business in inexpensive furniture sold at very low prices, a huge inventory began to arrive at FSFS. Much of the inventory was stored at locations rented on a short-term basis. The merchandise was then trucked to auction houses and sold at prices substantially below wholesale (Tr. 270-284). Many trucks were rented for this purpose. Wilson testified that one truck was purchased and title placed in petitioner Ward to protect it from bankruptcy proceedings (Tr. 268-269). Shortly before FSFS closed, an employee drove petitioner Slingerland to a branch of the bank used for the FSFS account to draw out its money.[3]

By April 30, 1974, the FSFS store was completely emptied of furniture (Tr. 63). On that day petitioner Slingerland, the nominal proprietor of FSFS, reported to the police that he had been robbed of $68,000 in cash (Tr. 270, 274, 389-394, 397-398).[4] The police asked him for

[1]The court of appeals reversed the convictions of two co-defendants Jarnigan and Micciche, on the ground that the evidence was insufficient to show their participation in the conspiracy.

[2]"Tr." designates the transcript of the trial in the district court.

[3]Slingerland asked the employee to drive him so that the firm's creditors would not see him leave (Tr. 436).

[4]Prior to the alleged robbery, witness Wilson told another witness that such a robbery would be claimed to account for FSFS's missing assets.

a statement of the circumstances of the robbery, which Slingerland never provided. He explained at trial that he failed to provide the police with the statement because he did not like their attitude (Tr. 808).

On May 10, 1974, creditors of Wilson, Slingerland and FSFS filed a petition for involuntary bankruptcy, and a receiver was appointed (Tr. 236). Petitioners, however, proceeded to dispose of FSFS merchandise at public auction. On May 11, 13, and 20, 1974, auctions arranged by Ward were held; petitioner Slingerland was present and assisted Ward at two of the auctions (Tr. 201-202, 204-205). The auctions brought in approximately $17,000, which Ward shared with Wilson and Slingerland (Tr. 202-203, 276-277). On May 28, 1974, another auction was held at which Slingerland, Ward and Wilson were present; a total of $17,675.50 was realized and was split among the three (Tr. 277-278, 509-510). An injunction prohibiting petitioner Ward from disposing of assets was issued June 27, 1974 (Tr. 237).

Petitioners testified in their own behalf and denied participating in any fraudulent scheme (Tr. 607-685, 749-825).

2. Viewed in the light most favorable to the government,[5] the evidence was sufficient to sustain the convictions. As the court of appeals stated (Pet. App. 4):

> With respect to Ward and Slingerland, the testimony of witness-Wilson precludes any innocent interpretation of these facts. While it is true that Wilson's character was shown to be less than spotless, it is well settled that "a conviction can rest on the uncorroborated testimony of a co-defendant or accomplice." *United States* v. *Guy*, 456 F.2d 1157, 1161 (8th Cir.), *cert. denied*, 409 U.S. 896 (1972); *Wood* v. *United States*, 361 F.2d 802 (8th Cir. 1966). Further, Wilson's testimony was substantially corrob-

[5]*Hamling* v. *United States*, 418 U.S. 87, 124; *Glasser* v. *United States*, 360 U.S. 60, 80.

orated. For example, the record shows that Wilson knew that Slingerland was planning a phony robbery some time prior to its occurrence. Other evidence in the record also serves to corroborate this direct testimony of an express conspiracy intended to defraud creditors and frustrate the bankruptcy laws.

It is therefore respectfully submitted that the petitions for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

MARCH 1976.